

WASHINGTON'S RAINWATER COLLECTION POLICY LETS 12,000 RAIN GARDENS BLOOM

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Aided by the Washington Department of Ecology's 2009 administrative policy allowing collection of rainwater for beneficial use without a water right permit, the Washington State University Extension and the nonprofit Stewardship Partners have launched an ambitious "12,000 Rain Gardens" campaign in Washington's Puget Sound region. Hundreds of rain gardens have already been developed in a variety of settings, encouraged by utility stormwater managers and advocates of sustainable building design.

What Exactly Is a Rain Garden?

A rain garden is an area dug into a slight depression, lined with gravel and backfilled with well-draining soil. Planted with native plants that can tolerate both soaking and drought, it captures channeled rain that irrigates the landscaping and then infiltrates on-site. Rain gardens act like a native forest by collecting and absorbing rainwater that runs off rooftops, driveways, parking areas, and other paved areas.

Rain gardens are one of the most versatile tools in the "low impact development" approach to managing stormwater. The traditional method of stormwater management moves runoff from buildings and paved areas to stormwater sewers in the street, where pipes carry the stormwater into streams and other water bodies. Rather than quickly conveying runoff away from a site, a rain garden filters the water, removing oil, fertilizer, pesticides, and other pollutants that would otherwise enter storm sewers and streams. Rain gardens also prevent flash floods and erosion by slowing down stormwater flows.

According to research by Washington State University, rain gardens are extremely effective at reducing water pollution, particularly when developed in clusters. Studies suggest that rain gardens allow metals to bind up to the mulch layer, and can break down other toxins.

Streets with rain gardens have been shown to stop 90 percent of pollutants running off roads, driveways, and other impervious surfaces.

Rain gardens can be sized and shaped to fit in various locations, depending on slopes and drainage capacity. Well-draining soil is essential, although “bog gardens” have also been developed successfully in areas with saturated or poorly-draining soils. A rain garden offers eye-catching, low maintenance landscaping that prevents pollution, increases property values, and reduces the overall cost of stormwater management.

The 12,000 Rain Gardens Campaign

The Washington State University Extension and Stewardship Partners have launched a campaign to install 12,000 rain gardens in the Seattle/Puget Sound region by 2016. Offering access to videos, workshops, and a rain garden handbook published by the WSU Extension, the campaign emphasizes the benefits to individual property owners as well as to municipalities struggling to control stormwater pollution.

According to the campaign’s on-site registry, over 700 rain gardens have already been installed in the Puget Sound region. Locations include parks, schools, apartment complexes, commercial facilities, college campuses, resorts, and industrial properties, in addition to single-family yards.

“They really work well and they aren’t that difficult to create,” said Kenan Block of Stewardship Partners. “They can range between a few hundred dollars to a few thousand dollars, depending on how big the area is. There is government money available to help offset that cost. This really is cost-effective as government entities try to pay for runoff infrastructure and sewer systems.”

Rain Gardens and Water Rights

The landscape irrigation component of rain gardens is undeniably a beneficial use of water, which would ordinarily require a water right permit under Washington law. Since 2009, Washington’s Department of Ecology has followed an administrative policy of not requiring a permit for on-site use of collected rainwater.

Ecology’s Water Resources Program Policy 1017 provides:

“The on-site storage and/or beneficial use of rooftop or guzzler collected rainwater is not subject to the permit process of RCW 90.03. If and when the department determines that rooftop or guzzler rainwater harvesting systems are likely to negatively affect instream values or existing water rights, local restrictions may be set in place to govern subsequent new systems. To qualify as rooftop collected

rainwater, the roof collecting the rainwater must be part of a fixed structure above the ground with a primary purpose other than the collection of rainwater for beneficial use. A guzzler is a device used to catch and store rainwater to provide drinking water for wildlife, livestock or birds.”

The policy introduction explains that after considering “existing legal authorities,” Ecology determined that existing law may be reasonably interpreted not to require a permit for the on-site storage and use of rooftop-collected rainwater. Under Ecology’s policy, the amount of water that can be collected and beneficially used is limited only by the size of the roof.

In 2011, Ecology reaffirmed that it does not intend to require a water right permit for the collection and on-site beneficial use of rainwater. In an article on the agency’s website, Ecology staff Curt Unger explains: “We very much did not want jurisdiction over rain barrels and even large cisterns. We’ve got a backlog of 6,000 or 7,000 water right applications, and the last thing we want is more people thrown into that backlog. Plus, we don’t want to regulate people if we don’t have to.”

Ecology’s policy raises two questions potentially affecting the success of the 12,000 Rain Gardens campaign. First, the policy is explicitly limited to rainwater collection from rooftops (and guzzlers). It does not mention storage and beneficial use of rainwater collected from other impervious surfaces, such as streets, driveways, or parking areas – all common sources of water for rain gardens in urban areas. Second, the policy raises the possibility of future local restrictions on “subsequent new systems” in areas where Ecology determines that rainwater collection would harm instream flows or existing water rights. This may preclude maximum development of rain gardens in some locations.

Conclusion and Implications

The 12,000 Rain Gardens campaign will, if successful, encourage sustainable landscape design throughout the Puget Sound region while saving millions of dollars in stormwater management and pollution cleanup costs. This solution depends upon the sensible interpretation of state water law to allow beneficial use of collected rainwater for irrigation. If extended to its logical conclusion to cover rainwater collected from any impervious surface, Ecology’s Policy 1017 should remove any remaining ambiguity over the lawful collection and use of rainwater to irrigate rain gardens.

For more information on the rain garden campaign and Ecology’s water right policy, see www.12000raingardens.org and www.ecy.wa.gov/programs/wr/hq/rwh.html.